

DEC 08 2009

JOHN F. GORCORA, CLERK
BY: *John F. Gorcora*
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IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION

UNITED STATES OF AMERICA,)	Criminal Case No. 6:07cr00012
)	
)	<u>2255 FINAL ORDER ADOPTING</u>
v.)	<u>REPORT AND RECOMMENDATION</u>
)	
BENJAMIN L. BELTRAN.)	By: Hon. Norman K. Moon
)	United States District Judge

Benjamin L. Beltran filed a motion to vacate, set aside, or correct sentence, pursuant to 28 U.S.C. § 2255, alleging that his guilty plea was not knowing and voluntary and that counsel provided ineffective assistance by failing to file a notice of appeal after Beltran requested. By Order entered June 4, 2009, the court ordered an evidentiary hearing and referred the matter to United States Magistrate Judge Michael F. Urbanski for a report and recommendation, pursuant to 28 U.S.C. § 636(b)(1)(B). An evidentiary hearing was held on September 15, 2009 and the Magistrate Judge filed a Report and Recommendation. In his report, the Magistrate Judge found that Beltran's plea was knowing and voluntary and that there was no credible evidence to support Beltran's claim that he requested that counsel file an appeal or that counsel provided constitutionally deficient assistance. Neither party has filed objections. Having reviewed the Magistrate Judge's Report and Recommendation and pertinent portions of the record, the court agrees with the Magistrate Judge's recommendation.

Accordingly, it is hereby **ORDERED** and **ADJUDGED** that the Magistrate Judge's Report and Recommendation is **ADOPTED** in its entirety; respondent's motion to dismiss is **GRANTED**; Beltran's petition is **DISMISSED**; and this matter is **STRICKEN** from the active docket of the court.

The Clerk of the Court is directed to send copies of this Order to the parties.

ENTER: This 8th day of December, 2009.

Norman K. Moon

United States District Judge